

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROWE PLASTIC SURGERY OF LONG
ISLAND, P.C. & NORMAN MAURICE
ROWE, M.D., M.H.A., L.L.C.,

Plaintiffs,

V.

AETNA HEALTH AND LIFE INSURANCE
COMPANY,

Defendant.

No.:

NOTICE OF REMOVAL

TO THE CLERK OF COURT:

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant, Aetna Life Insurance Company (incorrectly identified in the Complaint as “Aetna Health and Life Insurance Company”) (“Aetna”), hereby removes the case styled as Rowe Plastic Surgery of Long Island, P.C. & Norman Maurice Rowe, M.D., M.H.A., L.L.C. & v. Aetna Health and Life Insurance Company, Index No. 814317/2022E (the “State Court Action”), from the Supreme Court of the State of New York, Bronx County, where it is now pending, to the United States District Court for the Southern District of New York. The grounds for removal are as follows:

1. On or about September 28, 2022, Plaintiffs, Rowe Plastic Surgery of Long Island, P.C. (“RPSLI”) and Norman Maurice Rowe, M.D., M.H.A., L.L.C. (“Rowe LLC”), initiated the State Court Action by filing a Summons and Complaint in the Supreme Court of the State of New York, Bronx County, against Aetna. In accordance with 28 U.S.C. § 1446(a), true and correct copies of Plaintiffs’ Complaint, along with all other process, pleadings and orders served upon Aetna are attached hereto as **Exhibit 1**.

2. According to their affidavit of service, on or about September 29, 2022, Plaintiffs mailed a copy of the Summons and Complaint to the New York State Department of Financial Services by FedEx overnight delivery. A true and correct copy of Plaintiffs' affidavit of service is attached hereto as **Exhibit 2**.

GROUND FOR REMOVAL – DIVERSITY JURISDICTION

3. Based upon a review of public corporate records maintained by the New York State Department of State, Plaintiff RPSLI is a professional service corporation existing and operating under the laws of the State of New York, with its principal place of business, mailing address and registered agent located in Nassau County, New York.

4. Plaintiff Rowe LLC alleges that it is “a Limited Liability Company located in New York that provides health services in the States of New [] York and New Jersey.” *See* Compl., ¶ 7.

5. Based upon a review of public corporate records maintained by the New York State Department of State, Plaintiff Rowe LLC is a limited liability company existing and operating under the laws of the State of New York, with its principal place of business, mailing address and registered agent located New York County, New York.

6. “A limited liability company takes the citizenship of its members.” *Avant Capital Partners, LLC v. W108 Dev. LLC*, 387 F. Supp. 3d 320, 322 (S.D.N.Y. 2016) (citing *Bayerische Landesbank, N.Y. Branch v. Aladdin Capital Mgmt. LLC*, 692 F.3d 42, 49 (2d Cir. 2012)). “A complaint premised upon diversity of citizenship must allege the citizenship of natural persons who are members of a limited liability company and the place of incorporation and principal place of business of any corporate entities who are members of the limited liability

company.” *New Millennium Capital Partners, III, LLC v. Juniper Grp. Inc.*, No. 10 CIV. 46(PKC), 2010 WL 1257325, at *1 (S.D.N.Y. Mar. 26, 2010).

7. Upon information and belief, Norman Maurice Rowe, M.D. is the sole member of Plaintiff Rowe LLC and is a citizen of the State of New York.

8. Defendant Aetna is, and at the time of the filing of the State Court Action was, a Connecticut corporation with its principal place of business in Hartford, Connecticut.

9. Plaintiffs seek in excess of \$148,689.39 as a result of alleged underpayments for medical services they allegedly provided to “HC,” a member of a health benefits plan either insured or administered by Aetna. *See* Compl., ¶¶ 23-36, 92.

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because this is a civil action between citizens of New York (Plaintiffs) and Connecticut (Aetna), and the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interests.

11. Pursuant to 28 U.S.C. § 1441(b), the State Court Action is removable because no party in interest properly joined and served as a defendant is a citizen of the State of New York, the state in which the action was brought.

REMOVAL IS PROCEDURALLY PROPER

12. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty (30) days of the New York State Department of Financial Services’ receipt of the Complaint on or about September 29, 2022.¹

13. The United States District Court for the Southern District of New York is the appropriate venue for filing a Notice of Removal from the Supreme Court of the State of

¹ The last day of the 30-day removal period was Saturday, October 29, 2022. Accordingly, the 30-day removal period continues to Monday, October 31, 2022, the next business day. *See* Fed. R. Civ. P. 6(a)(1)(C).

New York, Bronx County, because it is the “district division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

14. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal, together with a copy of this Notice of Removal and attached exhibits, is being filed with the Supreme Court of the State of New York, Bronx County, and served upon counsel for Plaintiffs. A true and correct copy of the Notice to the State Court of Filing of Notice of Removal is attached as **Exhibit 3**.

15. In filing this Notice of Removal, Aetna reserves any and all counterclaims, defenses, objections, and exceptions, including without limitation those relating to jurisdiction, venue, and statutes of limitation.

WHEREFORE, Defendant, Aetna Health and Life Insurance Company, submits this notice that the State Court Action is removed from the Supreme Court of the State of New York, Bronx County to the United States District Court for the Southern District of New York.

Respectfully Submitted,

Dated: October 31, 2022

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the within Notice of Removal and supporting documentation has been electronically filed with the Clerk, United States District for the Southern District of New York, within the time and manner prescribed by the rules of the Court and that a copy of the within pleading has been served this date, via ECF and e-mail, upon all counsel of record in the State Court Action.

s/ Adam J. Petitt

Adam J. Petitt